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IN THE SUPREME COURT OF THE UNITED STATES

No. 446

STAPLING MACHINES CO.,
Appellant,
A. H. STONE, Chairman, State Tax Commission of the State of Mississippi, and J. M. STONE, General Counsel for the State Tax Commission of the State of Mississippi.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

SUPPLEMENTAL STATEMENT AS TO JURISDICTION

Bernard Leonard Tigner, Jr.
Counsel for Appellant

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 39,218

A. H. STONE, CHAIRMAN
STATE TAX COMMISSION

vs.

STAPLING MACHINES CO.

SUPPLEMENTAL STATEMENT AS TO JURISDICTION

In compliance with Rule 13 of the Rules of the Supreme Court of the United States as amended, plaintiff-appellant submits herewith its Supplemental Statement as to Jurisdiction, particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the Supreme Court of the State of Mississippi entered in this cause.

The record in this cause will disclose that the Appellant filed a Suggestion of Error with the Supreme Court of the State of Mississippi before judgment was entered, and which Suggestion was overruled by that Court on July 23, 1954, which was the final judgment of that Court and from which no further hearing could be had. That Suggestion of Error charged the Court that error had been committed on the following points:

> "We respectfully submit, with deference, that this Court in reversing the judgment of the lower court committed grevious error, in that the judgment contravenes the commerce clause of the Constitution of

the United States in that it violates Paragraph 3, Section 8 of the Constitution of the United States providing that Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian Tribes and also that said judgment violates Section 1 of the 14th Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty and property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

"1. That the Stapling Machines Co. did not direct or send the machines into Mississippi but lessee was free to take them wherever they pleased subject to the conditions of the license agreement.

"2. All taxes, including ad valorem, sales, income, are paid by the lessee in Mississippi, in accordance with the license agreement.

"3. The company is not using tangible personal property in Mississippi, as the property is used by lessee in its own location, in its own discretion, after paying in full for the property, legal title only being retained by lessor to protect the patent rights.

"4. In the stipulation of facts, the Court will note that 90 percent of all boxes manufactured on which royalty is paid were covered by unexpired box patents, and only 10 percent by expired box patents. This in itself disproves the allocation of the royalty income by the state whereby the state presupposes that all of the income is from the renting of tangible personal property, and the assessment made against appellee is at the rate of 14.09% of its total net income throughout the United States, which per-

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centage utilizes the entire gross income received by appellee from licensees in this state.

"5. The Legislature of Mississippi cannot pass taxation legislation that will reach across the state borders to tax an intangible right located outside the state, and the Supreme Court of the United States has continuously voided such legislation.

"6. The appellee is not present in Mississippi for any purpose, having nothing in the state on which the Tax Commission may take jurisdiction, the full value of the machines having been paid for, thereby acquiring an equitable title by the lessees who are assuming all responsibility of ownership, care, protection and taxation.

"7. Appellant continuously advises the court that the patents are located in this state, whereas they have never been in Mississippi for any purpose.

"8. Appellee is only asking relief from taxation on intangible rights (patents) located in New Jersey.

"9. The State of Mississippi grants the Appellee nothing, as the right to license its patents and enter into interstate contracts stems from the Federal Constitution and the Commerce Clause which guarantees it freedom from interference or burden by the State.

"10. A statute of a state which undertakes the tax on property wholly beyond her jurisdiction or control conflicts with the Fourteenth Amendment to the Constitution of the United States.

Appellant respectfully requests that this Supplemental Statement of Jurisdiction be filed in this case along with the original Statement as to Jurisdiction, and that the

judgment rendered by the Supreme Court of the State of Mississippi appealed from should be reversed.

BERNARD LEONARD TIGHE, JR.
Counsel for Appellant

I, John E. Stone, Attorney for the State Tax Commission, Appellee in the above entitled cause, acknowledge receipt of copy of the foregoing Supplemental Statement as to Jurisdiction, this the 16th day of November, 1954.

Attorney for State Tax Commission, Appellee

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